



# California Fair Political Practices Commission

August 21, 1987

James C. Gross  
Nielsen, Merksamer, Hodgson,  
Parrinello & Mueller  
1030 Fifteenth Street, Suite 250  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-87-205

Dear Mr. Gross:

You have requested clarification of advice we provided in a previous letter concerning Linda Costigan of Corporate Events and the lobbying provisions of the Political Reform Act (the "Act").<sup>1/</sup> Our previous letter, No. A-87-109, is incorporated herein by reference.

## QUESTION

Linda Costigan's duties include arranging luncheons and dinners with various officials on behalf of Pfizer Pharmaceuticals. Pfizer pays for these meals. Richard Costigan, her husband, is a lobbyist for Pfizer. You have asked whether Mr. Costigan has arranged a gift to a state or legislative official if Mr. Costigan, Ms. Costigan, and the state or legislative official are the only persons to attend one of these luncheons or dinners.

## CONCLUSION

If Mr. Costigan, Ms. Costigan, and a state or legislative official are the only persons to attend the luncheon or dinner paid for by Pfizer, Mr. Costigan has arranged a gift to the official.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 ~~of the~~ California Administrative Code.

#### FACTS

Ms. Costigan is the principal employee of Corporate Events. Pfizer Pharmaceuticals ("Pfizer") has contracted with Corporate Events for Ms. Costigan's services in arranging events for Pfizer at which gifts of food, drink and entertainment totaling more than \$10 are made to state and legislative officials.

You have informed us that Ms. Costigan's husband is a lobbyist for Pfizer. He is not the Pfizer executive to whom Ms. Costigan reports concerning the events she arranges on Pfizer's behalf. Mr. Costigan does not attend meetings with Ms. Costigan regarding arrangements for events on Pfizer's behalf. Mr. Costigan may make recommendations to the Pfizer executive to whom Ms. Costigan reports concerning suggestions for events to be attended by state and legislative officials and the specific officials to be invited.

#### ANALYSIS

Section 86203 provides:

It shall be unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than ten dollars (\$10) in a calendar month, or to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

Your question relates to Mr. Costigan's ability to accompany his wife to an event at which a state or legislative official receives a gift from Pfizer, and at which no other Pfizer employee is present. You have asked if Mr. Costigan has arranged a gift under these circumstances. Our previous advice letter addressed this situation only in general terms. To clarify our advice, we refer you to Regulation 18624, which defines when a lobbyist "arranges" a gift.

Regulation 18624 provides, in pertinent part, as follows:

A lobbyist "arranges for the making of a gift" within the meaning of Government Code Section 86203 if the lobbyist, either directly or through an agent, does any of the following:

\* \* \*

(b) Acts as the representative of the donor, if the donor is not present at the occasion of a gift. This does not include accompanying the recipient to an event where the donor will be present.

Regulation 18624(b).

Thus, Regulation 18624(b) states the general rule that a lobbyist who acts as the representative of the donor at the occasion of a gift has "arranged" the gift. Regulation 18624(b) also contains an exception to this general rule. This exception provides that a lobbyist who represents the donor at an event at which a state or legislative official receives a gift has not "arranged" the gift if the donor also is present.

Regulation 18624(b) is based on the Commission's decision in In re Institute for Governmental Advocates (1982) 7 FPPC Ops. 1 (copy enclosed). In that opinion, the Commission considered various factual situations involving lobbyists and gifts to public officials. The Commission concluded, among other things, that "when the lobbyist attends a luncheon or dinner paid for by the lobbyist's employer, but which the employer does not attend, the lobbyist facilitates the making of the employer's gift by attending, thus violating Section 86203." (In re Institute for Governmental Advocates, supra at p.7.)

In our previous letter, we quoted Regulation 18624 and explained that it imposes certain restrictions on Mr. Costigan's activities. We provided a general explanation of those restrictions, stating that, among other things, "... Mr. Costigan may not act as the sole representative of Pfizer at any event sponsored by Pfizer...." The language of the regulation actually states that a lobbyist arranges a gift if he "[a]cts as the representative of the donor if the donor is not present at the occasion of a gift." (Regulation 18624(b).) Thus, the question to resolve is whether Pfizer, the donor, is present in the situation described in your letter.

Clearly, corporations and other business entities such as Pfizer can be present at the occasion of a gift only through their agents or representatives. We agree with your general assertion that either employees or independent contractors may act as the representatives of a corporation or other business entity. Nevertheless, we conclude that, for purposes of Regulation 18624(b), Ms. Costigan's presence at the occasion of

a gift from Pfizer does not meet the requirement that the donor must be present.<sup>2/</sup>

Regulation 18624(b) includes an exception to the general rule that a lobbyist's presence at the occasion of a gift from his employer facilitates the gift. It is a well-established rule of construction that exceptions must be narrowly construed. (See, Estate of Banerjee (1978) 21 Cal. 3d 527, 540.) Section 81003 also dictates that the Act is to be broadly interpreted to accomplish its purposes. One purpose of the Act is:

The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

Section 81002(b).

If we conclude that Ms. Costigan's presence at a luncheon or dinner paid for by Pfizer is sufficient to fulfill the requirement that Pfizer must be present, then, by analogy, we should reach the same conclusion when Pfizer contracts with a caterer to serve lunch or dinner to Mr. Costigan and a public official. Arguably, the caterer is a "representative" of Pfizer, as is Ms. Costigan in the situation you presented. However, neither interpretation is consistent with a narrow construction of Regulation 18624(b) or with the Commission's previous interpretation of Section 86203.

Accordingly, we conclude that Mr. Costigan arranges a gift if he accompanies Ms. Costigan and a public official to a luncheon or dinner paid for by Pfizer, unless another

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<sup>2/</sup> In your letter, you cite our advice letter No. A-84-164 (copy enclosed) to support your conclusion that "for purposes of the Act, 'independent contractor' and an 'employee' are one in the same." The cited advice letter actually states the much more limited conclusion that the term "employee," as used in Regulation 18423, includes independent contractors. Regulation 18423 describes when payments for personal services are considered contributions for purposes of the Act. In view of the very limited conclusion in the advice letter and the fact that it concerned a question about campaign reporting rather than gifts from lobbyists, we cannot agree that the cited advice letter is relevant to the question you have posed.

James C. Gross  
August 21, 1987  
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appropriate Pfizer representative is present. Under Regulation 18624(b), if the other Pfizer representative is a Pfizer employee or officer whose position clearly includes the authority to represent Pfizer's interests to high-ranking state officials, we would conclude that Pfizer is "present."

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:plh  
Enclosures

LAW OFFICES OF  
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FILE NUMBER

July 27, 1987

6007.01

Kathy Donovan, Esq.  
Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, California 95804-0807

Re: Request For Advice

Dear Kathy:

This letter is to formally request clarification on certain issues raised by your letter of May 5, 1986 which responded to my request for advice on behalf of Corporate Events.

As we discussed a couple of weeks ago, Corporate Events has followed the advice given in your May 5th letter. Further, Dick Costigan has not arranged any of the events which public officials were invited to or to which public officials attended.

The issue which concerns Corporate Events relates to its status as a representative of clients for which it arranges events. Corporate Events understood your letter to advise that Mr. Costigan or any individual who is a registered lobbyist, may not make arrangements or be the sole representative at an event arranged by Corporate Events. However, we believed your letter to advise that Linda Costigan of Corporate Events could be that representative because she contracts to serve as a representative for Pfizer Pharmaceuticals as well as Corporate Events' other clients.

You mentioned in our telephone conversation that it might be necessary to differentiate between an independent contractor and an employee for purposes of determining whether Mrs. Costigan can act as the sole representative at functions sponsored by Pfizer. An advice letter issued by the Commission in 1984 (A 84-164) concluded that for purposes of the Act, "independent contractor" and an "employee" are one in the same. This suggests that there is no distinction between Mrs. Costigan and a Pfizer employee. Further, we view Corporate Events in the same light as any other independent contractor, such as legal counsel, who acts as a representative of corporate clients. Since those independent contractors are permitted to act as representatives of their clients at functions at which public officials attend, we assumed Corporate Events would be treated similarly and believed that your letter so advised.

Kathy Donovan, Esq.  
July 20, 1987  
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This is the issue on which we seek clarification. If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "James C. Gross".

JAMES C. GROSS

JCG:ss



# California Fair Political Practices Commission

July 31, 1987

James C. Gross  
Nielsen, Merksamer, Hodgson,  
Parrinello & Mueller  
1030 Fifteenth Street, Suite 250  
Sacramento, CA 95814

Re: 87-205

Dear Mr. Gross:

Your letter requesting advice under the Political Reform Act was received on July 30, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh